lina that the Ordinance of 1868, constituting the charter of the North Western North Carolina Railroad Company, was not superseded by the constitution of 1868, but was in force and therefore gave power to counties *embraced by its provisions* to take stock in that company and pay for it in county bonds just as Forsyth County had done." 180 *U. S.* 529.

Another principle announced in our former opinion was that the rights of the parties were to be determined by the law of the State as it was declared by the State court to be at the time the bonds were issued in the name of the county and put upon the market.

As indicating some of the points left undecided, we make this extract from our opinion:

"We have referred fully to the *Hill* and *Belo* cases because of the earnest contention of learned counsel that under the law of North Carolina, as declared in those cases before the bonds in question were made, the Ordinance of 1868, without the aid of subsequent legislation, gave full power to Wilkes County to issue such bonds. This view suggests various questions as to the scope and effect of that Ordinance. Assuming, as we must, that the *Belo* and *Hill* cases held that the Ordinance of 1868 remained in force after the adoption of the constitution, did the general power given by that Ordinance to the Northwestern Railroad Company to construct a railroad from its eastern terminus, 'running by way of Salem and Winston, in Forsyth County, to *some* point in the northwestern boundary line of the State, *to be hereafter determined*,' invest Wilkes County with authority to subscribe to the stock of the company and to issue bonds in payment of such subscription? Was Wilkes County in the same category with Forsyth County? Was the route of the road northwest of Salem and Winston to some point in the northwestern boundary line of the State to be determined by the legislature or by the company? If by the legislature, was that route ever determined otherwise than by the act of 1879, which has been adjudged never to have become a law of the State? Did Wilkes County have authority, under the Ordinance of 1868 alone, to aid, by a subscription of stock and bonds, the construction of the second division of the road referred to in the act of 1879, extending from the towns of Winston and Salem, up the valley of the Yadkin by way of Jonesville and Wilkesboro, in the county of Wilkes, to Patterson's Factory, in the county of Caldwell? These are matters about which we do not feel disposed to express an opinion under the very general and indefinite questions certified from the Circuit Court of Appeals. Nor do we deem it proper to express any opinion as to the scope and the effect upon the rights of the parties of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina. The certified questions do not directly or explicitly relate to any question arising under those sections of the Code; and it is not appro-

priate that this court should, under the questions certified, consider and determine the entire merits of the case." 180 *U. S.* 532.

That the qualified voters of Wilkes county gave their sanction to a subscription to the capital stock of the Northwestern North Carolina Railroad Company; that the bonds in suit are part of those issued in payment of such subscription; that stock was issued to the county to the full amount subscribed; that the road desired by the people of the county was constructed and is in operation; that for many years the county paid interest upon the bonds; and that the plaintiff purchased the bonds in suit for value and in good faith; these propositions are not disputed. However strongly these facts appeal to every one's sense of right and justice, they do not estop the county from raising the question of its power to have made the subscription and issued the bonds in question. We repeat what was said in the former opinion—indeed what had been held in many previous decisions—that if there was an absolute want of power to issue the bonds in question every purchaser of them was charged, in law, with notice of that fact, and could not look to the county in whose name they were issued. Such power could not be created by mere recitals in the bonds.

Did the county of Wilkes have power to issue these bonds? The plaintiff insists that the county had double legislative authority for issuing them; first, under the ordinance of 1868 incorporating the Northwestern North Carolina Railroad Company; second, under the above sections of the Code of North Carolina of 1883.

We have seen that at the time the bonds were issued the ordinance of 1868 was in force and gave power to counties embraced by its provisions to take stock in the North Western North Carolina Railroad Company and pay for it in county bonds. This was held, in our former opinion, to be taken as the law of North Carolina, because so declared by the Supreme Court of that State when the bonds were issued, and therefore as the law by which the rights of the parties were to be determined. So that the vital inquiry, on this part of the case, is whether the road in question was embraced by the provisions of the Ordinance of 1868, and therefore one that could be aided under that Ordinance by county subscriptions and bonds. If so, Wilkes county was plainly in the same category as Forsyth county, and its bonds (issued in payment of the subscription made by it) must be sustained as valid upon the same grounds as the Supreme Court of North Carolina approved in reference to the bonds issued by Forsyth county.

Turning now to the Ordinance of 1868, we find that the North Western North Carolina Railroad Company was incorporated to construct a railroad of one or more tracks "from some point on the North Carolina Railroad between the towns of Greensboro and Lexington, running by way of Salem and Winston in Forsyth county to some point in the northwestern

boundary line of the State, to be hereafter determined." No question arises in the present case as to the route adopted for the road that was constructed from its beginning point or eastern terminus to Salem and Winston, two towns near each other. It was mandatory under the ordinance that the road should run by the way of Salem and Winston. The road that Wilkes county desired to be built was from Salem and Winston to Wilkesboro. That was the road in aid of the construction of which its bonds were issued. If a road from Salem and Winston to Wilkesboro was substantially in the direction of "the northwestern boundary line of the State," then it would be one authorized by the Ordinance of 1868. The Ordinance did not fix the particular point in the northwestern boundary at which the northwestern terminus of the road should be established. It was some point, on that boundary, to be thereafter determined. Unless the legislature interferred and itself fixed the northwestern terminus of the road, the railroad company had the power to establish it at its convenience or as the necessities of the situation required, taking care that whatever route was adopted the road as constructed from time to time was to be, substantially, in the direction of some point in what was reasonably to be deemed the northwestern boundary line of the State. Undoubtedly those interested in the enterprise, as well as the Convention, contemplated that the road would be built mainly by money derived from municipal subscriptions and bonds. The railroad company was, therefore, left free to adopt a general route that would take the road "near or through" such counties as would aid the enterprise—no condition as to route being imposed except that the road should be in the direction of some point on the northwestern boundary line of the State. The authority of counties, by subscription of stock and bonds, to aid in the construction of a part of the road, did not depend upon the northwestern terminus being first established. If a county had authority, under any circumstances, to subscribe stock and issue bonds that authority could be exercised with reference to that part of the road in which, by reason of its location, it was immediately concerned. We are of opinion that the part of the North Western North Carolina Railroad which is here in question was, in a substantial sense, in the direction of some point in the northwestern boundary line of the State—due regard being had to the physical nature of the country through which it was to pass. The contention to the contrary cannot be sustained.

Looking further into the Ordinance of 1868, we find that it contemplated and authorized subscriptions by counties. It provided that all counties and towns subscribing stock to said company should do so in the same manner and under the same rules, regulations and restrictions as were set forth and prescribed in the charter of the Atlantic and North Carolina Railroad Company for the government of such towns and cities as were then allowed to subscribe to the capital stock of that company. Reading those provisions

of the charter of the Atlantic and North Carolina Railroad Company into the Ordinance of 1868, it is, we think, clear that any county near or through which the North Western North Carolina Railroad might pass (in the direction of some point in the northwestern boundary line of the State) could subscribe stock to be paid for by its bonds, provided, always, that the subscription was first approved by a majority of the qualified electors of the county voting upon the question of subscription. All these conditions were met in the case of Wilkes county. The qualified voters sustained the proposition to subscribe, and there is no substantial ground upon which to rest the contention that the county was without power, under the Ordinance of 1868, to make the subscription in question and to issue its bonds in payment therefor.

Other questions relating to the Ordinance of 1868 were discussed by counsel; but in the view we take as to its scope and meaning those questions need not be noticed in this opinion.

The appellees further insist that ample authority to issue the bonds in suit is also found in sections 1996, 1997, 1998, 1999 and 2000 of the Civil Code of North Carolina.

We do not deem it necessary to determine the scope of those sections; for, as we have seen, Wilkes County, independently of those sections, had authority under the Ordinance of 1868 to make the subscription and issue the bonds here in question. And this conclusion rests upon the law of North Carolina as declared by the Supreme Court of the State to have been at the time Wilkes County made its subscription and issued its bonds. This is sufficient to dispose of the case.

The judgment is *Affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.